

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

June 29, 1999

Marilyn L. Graves  
Clerk, Court of Appeals  
of Wisconsin

**NOTICE**

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

**No. 98-3574-FT**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT III**

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**RUSSELL S. GILSON, LYNNE S. GILSON AND MARGARET  
T. DVORAK,**

**PLAINTIFFS-APPELLANTS,**

**V.**

**CITY OF DE PERE,**

**DEFENDANT-RESPONDENT.**

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APPEAL from a judgment of the circuit court for Brown County:  
WILLIAM C. GRIESBACH, Judge. *Affirmed.*

Before Cane, C.J., Myse, P.J., and Hoover, J.

PER CURIAM. Russell Gilson, Lynne Gilson and Margaret Dvorak (collectively, "the Gilsons") appeal a summary judgment dismissing their complaint against the City of DePere. The Gilsons brought this action challenging the City's authority to condemn their land for an industrial railroad spur. The

Gilsons argue that (1) §§ 32.05(1)(a) and 190.16, STATS., do not authorize the City to acquire their land to build a railroad spur and (2) § 62.22, STATS., prevents the City from acquiring land for an industrial site. We affirm the judgment.<sup>1</sup>

The facts are undisputed. The City developed a business park and desired to extend an existing industrial railroad spur for rail service to a new business in the park, Re-Box Packaging, Inc. In 1996, Re-Box attempted to purchase land from the Gilsons over which the spur could be extended. After the Gilsons rejected its offer, the City agreed to sell Re-Box land adjacent to the Gilsons' property and to use eminent domain authority to condemn approximately one acre of the Gilsons' property to extend a railroad spur to the Re-Box facility.

Re-Box and the City agreed that should the City acquire the property, Re-Box would construct the spur line and transfer its interest in the line to the city for one dollar.<sup>2</sup> The spur line will remain public. Recognizing, however, that other businesses may connect to the spur line, the City will obligate future users to compensate Re-Box for their fair share of the construction costs.

The Gilsons brought this action challenging the city's power to condemn their property for the construction of the railroad spur. The trial court entered summary judgment dismissing their complaint.

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<sup>1</sup> This is an expedited appeal under RULE 809.17, STATS.

<sup>2</sup> In their brief, the Gilsons assert that upon completion of the railroad spur, the City would "transfer ownership of it to the third party for \$1.00." The record, however, undisputedly shows the opposite. The agreement states that Re-Box, at its sole cost, agreed "to construct the extension of the railroad spur in accordance with City provided specifications thereof; and, further, upon completion thereof, shall convey all title and interest in that portion of such spur extension from its current location up to and including Fortune Avenue *to City* for the price of One (\$1.00) Dollar." (Emphasis added.)

When reviewing a summary judgment, this court applies the same standards set forth in § 802.08, STATS., as the trial court. *Griebler v. Doughboy Recreational, Inc.*, 160 Wis.2d 547, 559, 466 N.W.2d 897, 902 (1991). Our review is de novo. *See id.* Summary judgment is granted when there is no dispute of material fact and the moving party is entitled to judgment as a matter of law. *Id.*; *see also Grams v. Boss*, 97 Wis.2d 332, 338, 294 N.W.2d 473, 476-77 (1980). Statutory interpretation is an issue of law we review de novo. *State v. Szulczewski*, 216 Wis.2d 494, 499, 574 N.W.2d 660, 662 (1998).

The Gilsons argue that § 32.05(1), STATS., does not authorize the City to acquire their property for the purpose of building a railroad spur. They further contend that ch. 190, STATS., governs the acquisition of land for railroad purposes and under that chapter only railroad companies may acquire industrial railroad spurs by condemnation. Because we conclude that the legislature's grant of authority to cities to acquire property for public purposes includes the authority to acquire property for the construction of a railroad spur, we affirm the summary judgment.

The goal of statutory interpretation is to ascertain legislative intent. *See Rolo v. Goers*, 174 Wis.2d 709, 715, 497 N.W.2d 724, 726 (1993). We first look to the statute's language. *State Hist. Soc. v. Village of Maple Bluff*, 112 Wis.2d 246, 252, 332 N.W.2d 792, 795 (1983). If the plain meaning is clear, we do not resort to rules of statutory construction or other extrinsic aids. *Id.* at 252-53, 332 N.W.2d at 795. Instead, we simply apply the statutory language to the facts before us. *Id.* We strictly construe condemnation statutes to benefit the owner whose land was taken against his or her will. *In re Redevelopment Authority*, 120 Wis.2d 402, 409, 355 N.W.2d 240, 244 (1984). A court must interpret a statute to avoid an absurd or unreasonable result. *Id.*

In § 62.11(5), STATS., the legislature has granted cities authority to manage and control local affairs.<sup>3</sup> Section 66.22(1), STATS., broadly grants cities authority to acquire property through condemnation. It states that a city may by condemnation acquire real property for "parks, recreation, water systems, sewage or waste disposal, airports or approaches thereto, cemeteries, vehicle parking areas, and for any other public purpose." Chapter 32, STATS., governs the exercise of the City's condemnation power for those purposes. Section 62.22(1), STATS.<sup>4</sup>

What constitutes a public purpose in the first instance is a question for the legislature to determine. *Hopper v. City of Madison*, 79 Wis.2d 120, 128, 256 N.W.2d 139, 142 (1977). "If an appropriation is designed in its principle parts to promote a public purpose so that its accomplishment is a reasonable probability,

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<sup>3</sup> Section 62.11(5), STATS., provides:

Except as elsewhere in the statutes specifically provided, the council shall have the management and control of the city property, finances, highways, navigable waters, and the public service, and shall have power to act for the government and good order of the city, for its commercial benefit, and for the health, safety, and welfare of the public, and may carry out its powers by license, regulation, suppression, borrowing of money, tax levy, appropriation, fine, imprisonment, confiscation, and other necessary or convenient means. The powers hereby conferred shall be in addition to all other grants, and shall be limited only by express language.

<sup>4</sup> Section 66.22(1), STATS., provides:

The governing body of any city may by gift, purchase or condemnation acquire property, real or personal, within or outside the city, for parks, recreation, water systems, sewage or waste disposal, airports or approaches thereto, cemeteries, vehicle parking areas, and for any other public purpose; may acquire real property within or contiguous to the city, by means other than condemnation, for industrial sites; may improve and beautify the same; may construct, own, lease and maintain buildings on such property for public purposes; and may sell and convey such property. The power of condemnation for any such purpose shall be as provided by ch. 32.

private benefits that are necessary and reasonable to the main purpose are permissible. For the public purpose requirement to be met, the subject matter of the appropriation must be a public necessity, convenience or welfare." *Id.* at 129-30, 256 N.W.2d at 143.

It cannot be seriously argued that the construction of a railroad spur to access the City's business park is not designed to promote a public purpose. *Menasha Woodenware Co. v. Railroad Comm'n*, 167 Wis. 19, 25, 166 N.W. 435, 438 (1918), in speaking of a spur track, notes:

In its very nature it cannot serve the public in the complete manner that an extension does, because it is not intended for passenger service, and it only reaches the property of one industry, or perhaps several; but its use is none the less public on the part of the one industry or the several industries which it serves, because thereby the one industry or the several industries are enabled to be reached by the public and to be served by the common carrier to the fullest extent.

The acquisition of real property for the purpose of constructing the railroad spur was an exercise of the City's authority under § 62.22, STATS. The City's determination to have a public railroad spur included in the infrastructure of its business park is an exercise of its home rule authority under § 62.11(5), STATS. The condemnation procedure, set out in § 32.05, STATS., specifically provides for "transportation facilities."<sup>5</sup>

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<sup>5</sup> Section 32.05, STATS., states: "All other condemnation of property for public alleys, streets, highways, airports, mass transit facilities, or other transportation facilities ... shall proceed as follows."

We reject the Gilsons' assertion that a strict statutory construction requires us to interpret "other transportation facilities" as prohibiting rail purposes. A more reasonable interpretation is that because § 32.05, STATS., specifically lists types of transportation methods other than rail (air, vehicle, mass transit), the "other transportation facilit[y]" would logically include rail. Indeed, elsewhere in the statutes, a "transportation facility" is defined to include a railroad spur. Section 84.185, STATS., provides:

(d) "Transportation facility" means any of the following:

....

4. Rail property consisting of an industrial lead, spur, team track property or trackside intermodal transfer facility.

While this definition is not contained in § 32.05, it nonetheless indicates an accepted meaning of transportation facility. We conclude that the legislature intended "other transportation facilit[y]" language found in § 32.05 to include the acquisition of land for the use of a railroad spur.

Next, the Gilsons argue that under § 190.16, STATS., only railroad companies have authority to acquire right of ways for industrial railroad spurs. We disagree. Section 190.16(1) states that "[a]ny railway company may build, maintain and operate spur tracks from its road to and upon the grounds of any industry ... and ... may acquire in the manner provided for the acquisition of real estate ... rights-of-way for such spur tracks." There is nothing in § 190.16, granting a railroad permission to acquire property for the construction of a railroad spur, that proscribes a municipality's power under § 66.22, STATS.

Finally, the Gilsons argue that § 62.22(1), STATS., prohibits the City from acquiring land for an industrial site through condemnation. This section

provides in part: "The governing body of any city ... may acquire real property within or contiguous to the city, by means other than condemnation, for industrial sites." The Gilsons maintain that the acquisition of the land for the railroad spur for access to an industrial site violates this section. We are unpersuaded. The City had previously acquired the business park; consequently, the Gilsons' property was not acquired to be used as an industrial site. Section 62.22(1) does not limit the City's condemnation powers to acquire property for transportation facilities. Because the Gilsons' property was to be used for transportation purposes, not as an industrial site, their argument fails.

*By the Court.*—Judgment affirmed.

This opinion will not be published. *See* RULE 809.23(1)(b)5, STATS.

